

DEPT. OF INSURANCE  
BY B

Docket No. 01A-240-INS

## CONSENT ORDER

Respondent

Dairyland wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

1. Dairyland is authorized to transact property and casualty insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of Dairyland, covering the time period from July 1, 1989 through December 31, 1994. The on-site examination was concluded on June 2, 1995. Based on the findings the Examiners prepared the "Report of Examination of the Market Conduct Affairs of Dairyland Insurance Company" dated June 2, 1995.

3. The Department previously conducted a market conduct examination of Dairyland. The on-site examination was concluded as of February 18, 1988. As a

1 result, a Consent Order (the "1988 Order"), was filed by the Director on July 28, 1988,  
2 Docket No. 6723. The 1988 Order stated in part as follows:

3  
4 1. Respondent[s] shall cease and desist from failing to include the  
5 amount of applicable taxes and fees that would be required to purchase  
6 comparable automobiles in its cash settlements of first party total loss  
claims. . . .

7 4. The Examiners reviewed 293 personal automobile policies issued by the  
8 Company during the time frame of the examination and found as follows:

9 a. Dairyland failed to round the premiums for each individual coverage  
10 policy on 76 policies to the nearest dollar according to its filed "Whole Dollar Rule."

11 b. Dairyland issued 56 policies for terms other than whole months or  
12 multiples of whole months, the only policy terms listed in its filed rates and rules.

13 5. The Examiners reviewed 70 motorcycle policies issued by the Company  
14 with effective dates from July 18, 1989 through December 2, 1994 and found as  
15 follows:

16 a. Dairyland issued uninsured motorist coverage on nine policies  
17 without charge, although an additional charge for this coverage was filed with the  
18 Department.

19 b. Dairyland issued 31 policies at premiums determined by methods  
20 other than those described in its filed rates and rules.

21 c. According to Dairyland's filed rates and rules, policies issued in its  
22 Safe Trip program included comprehensive and collision coverage, including \$1,000  
23 accessory and equipment coverage. The filed rates and rules do not permit these  
24 coverages to be separated. Dairyland issued two Safe Trip policies whose premiums  
25 were based in part on an unfiled symbol.



1           d.     Dairyland issued three policies for terms other than whole months  
2 or multiples of whole months, the only policy terms listed in its filed rates and rules.

3           e.     Dairyland issued 23 policies with physical damage coverage  
4 where the premiums were based in part on motorcycle model group symbol letters that  
5 were not filed with the Department.

6           f.     As a result of its issuance of motorcycle policies at rates other than  
7 its filed rates, Dairyland overcharged four insureds more than \$5.00, which totaled  
8 \$68.40. Dairyland has refunded the \$68.40 plus \$74.48 in interest to the four insureds.

9           6.     The Examiners reviewed 104 personal automobile policies and 18  
10 motorcycle policies cancelled or non-renewed by the Company during the time frame  
11 of the examination and found as follows:

12           a.     Dairyland mailed a renewal notice to 123 insureds that contained  
13 the following language: "No Grace Period. If payment is not received by the due date  
14 your coverage(s) will be cancelled."

15           b.     Dairyland failed to send a final notice of cancellation on the  
16 effective date of the cancellation of six policies.

17           c.     Dairyland failed to provide six insureds with a cancellation notice  
18 that stated the insureds had a right to complain to the Director of the insured's actions.

19           d.     Dairyland issued ten notices of non-renewal that incorrectly stated  
20 "Complaint to the Director must be in writing and be accompanied by a deposit of \$10."

21           e.     Dairyland non-renewed three policies for reasons not permitted by  
22 statute.

23           f.     Dairyland cancelled 13 policies for non-payment of premium, but  
24 failed to notify the insureds of the right to complain to the Director.

7. The Examiners reviewed 601 of 601 first party automobile total loss claims settled by the Company during the time frame of the examination and found as follows:

a. Dairyland failed to pay 234 claimants applicable taxes, license fees, and other fees incident to transfer of evidence of ownership of a comparable automobile.

b. Dairyland failed to document whether it had paid license fees to 33 claimants. These claimants did recover the monies due them for license fees, as the result of overpayments of sales taxes and overpayment of the claim itself.

c. Dairyland failed to adequately document 181 files to support its deductions from actual cash value.

d. Of the claims cited in Subparagraphs 7a and 7c above, 155 claims were underpaid by \$5.00 or more. These claims were underpaid by a total of \$52,419.65.

8. The Examiners reviewed 23 automobile claims denied by the Company during the time frame of the examination for cancellation of the policy due to non-payment of premium and found that Dairyland denied two claims where the date of loss was within the seven-day grace period.

## CONCLUSIONS OF LAW

1. Dairyland violated A.R.S. § 20-385(A) by determining personal automobile and motorcycle premiums and terms other than according to their filed rates and rules.

2. Dairyland violated A.R.S. §§ 20-1632.01(B) by failing to:



a. Send notices of cancellation or non-renewal to personal auto insureds for non-payment of premium after the seven-day grace period on the effective date of cancellation.

b. Notify personal auto insureds whose policies were cancelled or non-renewed of the right to complain to the Director.

3. Dairyland violated A.R.S. § 20-1632.01(A) by stating on its personal automobile and motorcycle cancellation notices, "No Grace Period! If payment is not received by the due date your coverage(s) will be cancelled."

4. Dairyland violated A.A.C. R20-6-801(H)(1)(b), A.R.S. § 20-461(A)(6), and the 1988 Order by failing to pay claimants for all applicable taxes, license fees, and other fees incident to transfer of evidence of ownership of a comparable automobile.

5. Dairyland violated A.A.C. R20-6-801(H)(1)(c) and A.R.S. § 20-461(A)(6) by failing to adequately document files to support deductions from ACV.

6. Dairyland violated A.A.C. R20-6-801(C) by failing document whether it had paid license fees to first-party total loss claimants.

7. Dairyland violated A.R.S. §§ 20-461(A)(6) by denying automobile claims with dates of loss between the policy effective date and the seven-day grace period for non-payment of premium.

8. Grounds exist for the entry of the following Order pursuant to A.R.S. §§ 20-220 and 20-456.

## ORDER

**IT IS ORDERED THAT:**

1. Dairyland Insurance Company, shall:

1           a. Determine personal automobile and motorcycle insurance  
2 premiums and terms using methods other than the rates and rules filed with the  
3 Department;

4           b. Send notices of cancellation or non-renewal to personal auto and  
5 motorcycle insureds for non-payment of premium after the seven-day grace period,  
6 which is the effective date of cancellation;

7           c. Notify insureds whose policies were cancelled or non-renewed of  
8 their right to complain to the Director regarding the actions of the insured;

9           d. Pay claimants for all applicable taxes, license fees and other fees  
10 incident to transfer of evidence of ownership of a comparable automobile;

11           e. Adequately document files to support deductions from ACV;

12           f. Document whether it had paid license fees to first-party total loss  
13 claimants;

14           g. Not deny automobile claims with dates of loss between the policy  
15 effective date and the seven-day grace period for non-payment of premium.

16           2. Within 90 days of filed date of this Order, Dairyland shall submit to the  
17 Arizona Department of Insurance, for approval, evidence that all items mentioned in  
18 Paragraph 1 of the Order section of this Consent Order have been implemented and  
19 communicated to the appropriate personnel. Evidence of corrective action and  
20 communication thereof includes but is not limited to memos, bulletins, E-mails,  
21 correspondence, procedures manuals, print screens and training materials.

22           3. Within 90 days of the filed date of this Order, Dairyland shall pay the 155  
23 insureds listed in Exhibit A of this Order, the amount of \$52,419.65 for applicable taxes,  
24 license fees, and interest at the rate of ten per cent per annum from the date of the  
25 claim was made to the date the claim was paid, and other fees incident to transfer of



1 evidence of ownership of a comparable automobile.

2 4. Each payment made pursuant to paragraphs 3 above shall include a  
3 letter to the insured in a form previously approved by the Director. A list of payments,  
4 giving the name and address of each party paid, the amount of the payment, the  
5 amount of interest paid, and the date of payment, shall be provided to the Department  
6 within 90 days of the filed date of this Order.

7 5. The Department shall be permitted, through authorized representatives to  
8 verify that Dairyland has complied with all provisions of this Order.

9 6. Dairyland shall pay civil penalties totaling \$27,500.00 to the Director for  
10 deposit in the State General Fund in accordance with A.R.S. § 20-220(B). These civil  
11 penalties shall be provided to the Market Conduct Examinations Division of the  
12 Department prior to the filing of this Order.

13 7. The Report of Examination of the Market Conduct Affairs of Dairyland as  
14 of June 2, 1995, including the letter submitted in response to the Report of  
15 Examination, shall be filed with the Department after the Director has filed this Order.

16 DATED at Phoenix, Arizona this 17<sup>th</sup> day of October, 2001.

17  
18 

19 Charles R. Cohen  
20 Director of Insurance  
21  
22  
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25

EXHIBIT A

FIRST PARTY TOTAL LOSS CLAIM UNDERPAYMENTS

DATE OF LOSS	CLAIM NUMBER	TOTAL DUE INSURED
8/17/89	144165	\$163.75
8/29/89	144663	\$13.25
9/23/89	146207	\$601.88
10/11/89	147075	\$13.50
10/21/89	147380	\$50.27
11/11/89	148168	\$33.31
12/04/89	154083	\$855.35
12/10/89	154570	\$21.35
12/24/89	155047	\$67.50
1/15/90	156241	\$2,376.25
2/05/90	157110	\$13.75
2/05/90	157218	\$13.75
3/11/90	158491	\$1,069.88
4/09/90	159648	\$693.65
5/08/90	161142	\$585.85
5/09/90	161312	\$216.15
6/01/90	162433	\$156.06
6/17/90	163029	\$75.25
7/09/90	164140	\$372.75
7/24/90	165318	\$243.50
7/25/90	165396	\$26.75
8/18/90	166632	\$49.25
8/14/90	166642	\$10.75
8/13/90	166843	\$278.65
8/25/90	167049	\$13.75
9/05/90	167753	\$733.65
9/29/90	168936	\$111.12
10/18/90	169462	\$9.40
10/16/90	169817	\$109.45
10/21/90	170069	\$25.75
11/09/90	171037	\$513.54
11/13/90	171462	\$23.25
11/24/90	172055	\$13.75
12/01/90	172224	\$237.58
11/25/90	172699	\$152.48
12/04/90	172983	\$10.00
12/22/90	173832	\$8.95
1/25/91	175104	\$22.73
1/26/91	175289	\$43.47
2/04/91	176246	\$3,331.88
2/24/91	176781	\$10.75
3/01/91	177182	\$220.10
3/06/91	177385	\$209.82



EXHIBIT A  
(Continued)

FIRST PARTY TOTAL LOSS CLAIM UNDERPAYMENTS

DATE OF LOSS	CLAIM NUMBER	TOTAL DUE INSURED
3/01/91	177417	\$121.90
3/14/91	177616	\$24.25
4/20/91	180089	\$182.06
5/05/91	180805	\$8.75
6/11/91	184330	\$1,042.08
7/09/91	187997	\$1,160.75
8/05/91	191735	\$927.50
8/21/91	193735	\$9.13
11/05/91	202777	\$834.50
11/07/91	203535	\$502.00
12/10/91	207324	\$81.25
12/12/91	208095	\$75.64
12/20/91	209282	\$134.25
1/06/92	210326	\$24.39
1/11/92	210736	\$19.50
1/23/92	211443	\$269.35
1/16/92	212150	\$5.00
2/08/92	212858	\$10.00
2/02/92	213593	\$67.00
4/12/92	222378	\$30.00
4/25/92	224910	\$4,110.00
4/23/92	225586	\$47.00
5/08/92	226779	\$13.70
5/01/92	226190	\$81.25
5/05/92	226838	\$18.25
5/12/92	227370	\$742.00
6/20/92	234008	\$749.00
7/18/92	237624	\$892.93
7/18/92	239513	\$154.12
7/28/92	240371	\$22.75
8/16/92	243311	\$799.00
9/19/92	249017	\$6.75
10/09/92	250779	\$16.00
10/13/92	250799	\$18.25
10/12/92	251670	\$1,995.55
10/08/92	251805	\$380.92
10/19/92	252709	\$5.40
11/06/92	253702	\$38.50
10/30/92	254339	\$18.00
11/03/92	254763	\$101.65
11/19/92	256480	\$12.22
11/22/92	257121	\$24.10

EXHIBIT A  
(Continued)

FIRST PARTY TOTAL LOSS CLAIM UNDERPAYMENTS

DATE OF LOSS	CLAIM NUMBER	TOTAL DUE INSURED
11/26/92	257295	\$668.75
11/29/92	258160	\$5.70
12/14/92	260621	\$45.70
12/26/92	263215	\$594.32
1/12/93	265764	\$82.50
2/08/93	268872	\$63.00
2/15/93	269922	\$8.40
3/04/93	273287	\$235.82
4/07/93	277806	\$251.54
4/14/93	278951	\$286.50
4/17/93	279826	\$234.53
4/23/93	280439	\$814.58
5/10/93	282917	\$340.65
5/31/93	285815	\$212.93
6/12/93	287715	\$16.48
6/18/93	288511	\$6.60
6/20/93	288837	\$35.25
7/03/93	291231	\$7.70
7/03/93	291689	\$676.09
7/14/93	292723	\$134.91
7/29/93	293335	\$533.50
7/31/93	295216	\$18.75
8/05/93	296247	\$60.15
8/04/93	197117	\$848.50
8/16/93	298249	\$473.15
8/30/93	299317	\$187.15
9/03/93	300656	\$66.43
10/14/93	306774	\$9.50
10/29/93	307755	\$119.60
11/07/93	311460	\$265.02
11/19/93	312338	\$647.52
12/01/93	313284	\$1,028.17
12/02/93	313685	\$625.50
12/05/93	313961	\$240.08
12/15/93	314459	\$232.25
12/15/93	315404	\$430.00
12/27/93	316506	\$6.75
12/18/93	317217	\$1,112.50



EXHIBIT A  
(Continued)

FIRST PARTY TOTAL LOSS CLAIM UNDERPAYMENTS

DATE OF LOSS	CLAIM NUMBER	TOTAL DUE INSURED
1/02/94	317577	\$131.90
1/15/94	318737	\$285.25
1/24/94	320217	\$21.50
2/13/94	322194	\$9.12
2/14/94	323669	\$215.03
3/03/94	326726	\$163.50
3/02/94	327688	\$589.50
2/27/94	328175	\$538.50
4/11/94	331811	\$536.75
4/30/94	333763	\$50.00
1/28/94	337456	\$1,506.95
6/03/94	339323	\$82.00
8/01/94	347672	\$587.50
8/09/94	348027	\$11.25
8/05/94	349192	\$41.75
8/21/94	350841	\$1,260.50
8/29/94	351376	\$26.75
8/29/94	352195	\$74.25
9/08/94	353586	\$28.05
10/06/94	354673	\$1,901.25
9/30/94	356025	\$482.75
9/24/94	356448	\$76.25
9/25/94	356600	\$203.48
9/25/94	357122	\$136.75
10/09/94	357632	\$54.21
12/02/94	361301	\$9.25
11/25/94	361584	\$1656.60
11/02/94	361927	\$533.50
10/18/94	362047	\$7.00
10/29/94	362070	\$15.25
11/20/94	363400	\$26.25
11/13/94	366032	\$68.50
Totals	155 Claims	\$52,419.65

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2. Dairyland Insurance Company admits the jurisdiction of the Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the entry of the Conclusions of Law and Order.

4. Dairyland Insurance Company states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

6. William M. O'Reilly, who holds the office of Secretary of Dairyland Insurance Company, is authorized to enter into this Order for them and on their behalf.

October 11, 2001 By: \_\_\_\_\_  
Date

W O'Reilly



1 COPY of the foregoing mailed/delivered  
2 This 17th day of October 2001, to:

3 Sara Begley  
4 Deputy Director  
5 Paul J. Hogan  
6 Chief Market Conduct Examiner  
7 Market Conduct Examinations Section  
8 Mary Butterfield  
9 Assistant Director  
10 Consumer Affairs Division  
11 Deloris E. Williamson  
12 Assistant Director  
13 Rates & Regulations Division  
14 Steve Ferguson  
15 Assistant Director  
16 Financial Affairs Division  
17 Nancy Howse  
18 Chief Financial Examiner  
19 Terry L Cooper  
20 Fraud Unit Chief

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